

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION

JUN 29 2015

JULIA C. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

DON W. McKINNEY,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,

Defendant.

Case No. 2:15CV13

**OPINION**

By: James P. Jones  
United States District Judge

*Don W. McKinney, Pro Se.*

In this pro se action under 42 U.S.C. § 1983, the plaintiff seeks to proceed in forma pauperis. Based on the affidavit filed by the plaintiff in other cases filed by him, I will allow the Complaint to be filed without payment of the filing fee, pursuant to 28 U.S.C. § 1915(a)(1). However, upon examination of the Complaint, I find that it is without merit and will dismiss it.

The plaintiff complains of a long-ago criminal conviction in state court, the subject of numerous pro se suits filed in this court over the years.<sup>1</sup> To state a claim under § 1983, the plaintiff must allege that the violation was committed by a “person” acting under the color of state law. 42 U.S.C. § 1983. States and governmental entities that are considered arms of the state for Eleventh

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<sup>1</sup> Most of which cases involve, in one way or the other, the same claims made here. See, e.g., *McKinney v. Kilgore*, No. 7:05-CV-00255, 2005 WL 1000369 (W.D. Va. Apr. 29, 2005); *McKinney v. Earls*, No. 2:03 CV 00153, 2004 WL 3249255 (W.D. Va. June 26, 2004), *aff'd*, 122 F. App'x 36 (4th Cir. 2005) (unpublished).

Amendment purposes are not “persons” under § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70 (1989).

The plaintiff fails to state a claim on which relief may be granted, and accordingly, his action will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The plaintiff is cautioned that further actions filed in this court without merit may subject him to sanctions, including an injunction against such filings.

A separate order will be entered herewith.

DATED: June 29, 2015

/s/ James P. Jones  
United States District Judge